SUPREME COURT, U. S.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

NO. 819

DAVID R. WEINBERG,
Petitioner

v.

BOARD OF COMMISSIONERS OF THE
ALABAMA STATE BAR, et al.
Respondents

BRIEF OF RESPONDENTS

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INTRODUCTION

This Brief of Respondents is filed in opposition to a Petition for Writ of Certiorari wherein the Petitioner seeks to have this Honorable Court review a decision and opinion of the Supreme Court of Alabama rendered on June 22, 1967, Ex parte David R. Weinberg, _____ Ala. _____ 201 So. 2d 38. The Supreme Court of Alabama held that an applicant who had given contradictory answers under oath to questions

relating to involvement in prior court actions on student registration form and application to take bar exam, who received sympathetic and full hearing, who refused to offer evidence of any probative force in explanation of his contradictory answers, and who refused to swear to unsworn self-serving statements, was not denied due process of law by refusal to grant permission to take bar examination.

JURISDICTION

The Petitioner seeks to invoke jurisdiction under 28 U. S. Code, Sec. 1651 (A), and cites three cases of the Supreme Court of the United States, namely, Schware v. Board of Bar Examiners, 353 U. S. 232, Konigsberg v. State Bar of California, 353 U. S. 252, 366 U. S. 36, and Gault vs. U. S. (May 15, 1967) unreported. Gault is completely inapposite, whereas Schware and Konigsberg support Respondents' rather than Petitioner's position, enunciating the propositions (a) that a state can require high standards of qualification, such as good moral character, and (b) that a state may place the burden of proof on an applicant to establish good moral character.

QUESTIONS PRESENTED

The Petitioner has presented six questions. The Respondents submit that the questions presented are more clearly stated as follows:

Question A. The rules for admission to the Alabama Bar requiring an applicant to establish his good moral character do not offend any provision of the Constitution of the United States.

Question B. There is ample relevant material and competent evidence in the record to support a finding by the Character and Fitness Committee and the Board of Commissioners that Petitioner failed to establish the requisite qualities of character and fitness for admission to the Alabama State Bar.

STATUTES AND RULES INVOLVED

Title 46, Sec. 25, Code of Alabama 1940 (A 13 Petition For Writ of Certiorari)

Rules Governing Admission to the Bar of Alabama(A13-A14, Petition for Writ of Certiorari) Respondents supplement the material contained in Appendix to Petition with the following:

1. - - - Such notice shall be accompanied by a fee of $2.00 and also by a sworn application in substantially the following form:

- - - - - - -

6. (a) Have you ever been charged with violating any State or Federal

law, or City ordinance? If so, state the facts fully on a separate sheet giving dates, places, and outcome. Note: Minor traffic violations need not be shown.

(b) Have you ever been involved in a legal proceeding of any kind? If so, state the facts fully on attached sheet, showing dates, place, and name of the case and in what court. (p. 2, 3, Rules)

- - - - - -

Each applicant for admission to the Bar of Alabama shall file with the Secretary the following:

(a) A full and direct answer subscribed and sworn to by the applicant before some officer authorized to administer oaths, to each of the following questions:

- - - - -

11. (a) Have you ever been a party or otherwise involved in any legal proceeding, civil or criminal?

(b) If so, state the facts fully. (p. 5, 6, Rules).

STATEMENT OF THE CASE

The Respondents will not again outline the steps which culminated in the decision and opinion of the Supreme Court of Alabama rendered on June 22, 1967, namely, the hearings before the Committee on Character and Fitness, the hearings before the Board of Commissioners, and the first appeal of Petitioner to the Supreme Court of Alabama, which was dismissed on Petitioner's motion. The decision and opinion describes the history of the case accurately (Petition for Writ of Certiorari, A1-A9)

The facts which are decisive of the issues in this case are undisputed. The evidence concerning two factors is uncontradicted.

I

Contradictory answers on student registration form and application to take bar exam.

The Petitioner admits that he gave a false answer to a question on the application to register as a law student executed on February 14, 1962.

This application form was introduced in evidence before the Board of Commissioners on May 20, 1966, and the pertinent

question and answer was read into the record. (R. 37-38)

Petitioner admits the execution of this application on February 14, 1962, and his entire case is predicated upon his abortive attempts to explain his false answer. This is evident from the following quotes from his Petition for Writ of Mandamus filed in the Supreme Court of Alabama:

- - - - -

"On or about February 14, 1962, Petitioner did register with the Board, as a law student and did file the required forms and pay the required fees as set down in the Boards rules. (p. 1 Petition for Writ of Mandamus)

- -- -- -

"The Boards finding is wrongfully based on conflicting answers made on application forms and registration forms as an automatic basis for exclusion in violation of the due process clause of the 14th Amendment of the U. S. Constitution.

"The false registration form made in 1962, has not been proven, under the civil rules of evidence to be purposely concealed, under Alabama law.

"The false statement made in 1962 is to remote as evidence to support a finding of present fitness to qualify to work as a lawyer in Alabama." (emphasis added) (p. 2 Petition for Writ of Mandamus)

The Supreme Court of Alabama was privileged to rely upon those facts admitted in the Brief filed by the Petitioner with said Court. Petitioner's Brief contained the following significant statements:

- - - -

"This Court has been requested to rule on the following allegations, as Petitioner contends, and as he alledges in his petition filed in this Court that Petitioner's rights under the Due Process Clause of the 14th Amendment to the U. S. Constitution were violated in that: (1) the Board's finding is based on Petitioner's conflicting answers made on the Board's registration form and admission application as an automatic rule of disqualification; - - - -(emphasis added) (p.1 Petitioner's Brief)

"- - - the Board's 1962 registration as a law student form has not been proven to be purposely concealed

warranting exclusion and that the 1962 false statement made on the Board's registration form is too remote under Alabama law to support a finding to disqualify Petitioner. (emphasis added) (p. 2 Petitioner's Brief)

- - - -

"Introduced into evidence by the Board was a February 14, 1962 registration, a law student form, and a June, 1965 admission application to take the bar exam, both signed and filed by Petitioner. On the 1965 admission application was the Petitioner's voluntary admission of a 1959-1960 bastardy - desertion - non-support proceeding, in which Petitioner acknowledged paternity in the bastardy proceeding through his attorney, and on the same day Petitioner was convicted on non-support. On the 1962 registration form was the statement that Petitioner had never been involved in any court proceeding. Said statement conflicted with the 1965 admission application. (emphasis added) (p. 3 Petitioner's Brief)

- - - - -

"The Petitioner's application for registration dated in February, 1962 and the application for admission in

June, 1965 have clearly conflicting statements concerning Petitioner's involvement in a 1959-1960 bastardy and non-support conviction." (emphasis added) (p. 18 Petitioner's Brief)

II

Petitioner's conduct before the Board of Commissioners and refusal to swear to statements concerning admitted false answer on registration form.

At a hearing before the Board of Commissioners on May 20, 1966, the Petitioner appeared and presented six unsworn self-serving written statements. He adamantly refused to swear to the truthfulness of these statements before the Board. (R. 27, 33) He adamantly refused to swear to the truthfulness of these statements before a Notary Public and present them in affidavit form. (R. 35-37)

Because Petitioner professed to a certain amount of nervousness, an offer was made to continue the hearing to a later hour, until the following day, or until a later meeting of the Board. This offer was refused. (R. 32)

A special committee of three was appointed to confer with Petitioner to relieve him of his professed nervousness and explain to him the necessity of swearing to his proffered statements. Special attention is called to the report of Mr. T. B. Hill, Chairman of this committee (R. 35-37) (Opinion of the Supreme Court of Alabama, Petition for Writ of Certiorari, A5-A7)

Although Petitioner had been warned that his proffered unsworn statements would be of no probative value, they were offered into evidence and read into the record at his request. These statements consisted of the following: (a) Explanation of Unintentional False Answer On Registration Affidavit In 1962 (R. 42-43), (b) statement dated May 20, 1966 (R.43) (c) Statement of Applicant To The Board (R. 43-44), (d) Offer of Attorney Roy Landrums Court Records To Help Define What Is Such Character To Be Fit To Be An Attorney In Alabama (R.45), (e) Statement Regarding My Law Suit Against The Government For Wrongfully Firing Me (R.47), and (f) Explanation Of Non Support Conviction (R. 47-48)

Letters from a number of persons attesting to Petitioner's character were placed in evidence. (R. 48-49)

A motion was thereupon made, seconded and carried without dissenting vote that the application of Petitioner to stand the State Bar Examination be disallowed and the action of the Character and Fitness Committee in disallowing said application be upheld and affirmed. (R.81)

ARGUMENT

QUESTION A

The rules for admission to the Alabama Bar requiring an applicant to establish his good moral character do not offend any provision of the Constitution of the United States

"A State can require high standards of qualification such as good moral character or proficiency in its law, before it admits an applicant to the bar, - - - - -

"To a wide and deep extent, the law depends upon the disciplined standards of the profession and belief in the integrity of the courts. We cannot fail to accord such confidence to the state process, and we must attribute to its courts the exercise of a fair and not a biased judgment in passing upon the application of those

seeking entry into the profession." Schware v. Board of Bar Examiners, 353 U. S.

"Consideration of petitioner's contentions as to the effect of this Court's decision in the former Konigsberg case requires that there be kept clearly in mind what is entailed in California's rule, comparable to that in many states, that an applicant for admission to the bar bears the burden of proof of 'good moral character' - - - - a requirement whose validity is not, nor could well be, drawn in question here." Konigsberg v. State Bar of California, 366 U. S. 36

QUESTION B

There is ample relevant material and competent evidence in the record to support a finding by the Character and Fitness Committee and the Board of Commissioners that Petitioner failed to establish the requisite qualities of character and fitness for admission to the Alabama State Bar

Petitioner admits filing a false affidavit on February 14, 1962, by failing to disclose certain prior court actions. He was

given every opportunity to explain these matters under oath, and he steadfastly refused to do so.

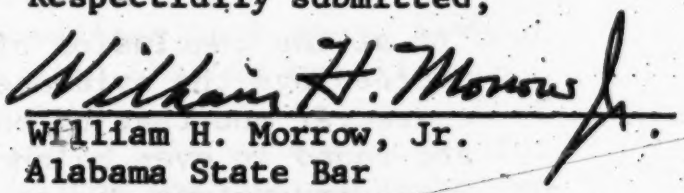
> "If at the conclusion of the proceedings the evidence of good character and that of bad character are found in even balance, the State may refuse admission to the applicant, just as in an ordinary suit a plaintiff may fail in his case because he has not met his burden of proof." Konigsberg v. State Bar of California, supra.

CONCLUSION

Petitioner was afforded a sympathetic and full hearing. He refused to offer evidence of any probative force in explanation of his contradictory answers There was no denial of due process. The

pending Petition for Writ of Certiorari should be denied.

Respectfully submitted,



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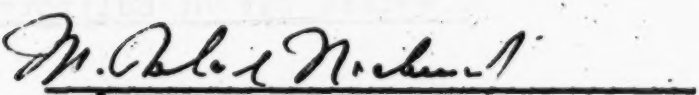

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